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Maybank Islamic Bhd v WWE Holdings Bhd

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(IM)-57–07 OF 2016
IDRUS HARUN, MARY LIM AND ASMABI MOHAMAD JJCA
18 MAY 2017

C *Civil Procedure — Attachment — Garnishee order — Borrower of banking facilities absolutely assigned to bank monies due and payable to it by respondent under building contract — Bank entered consent judgment against borrower for monies owing under banking facilities — Respondent in letter to borrower acknowledged amount it owed borrower for variation works done by latter under* D *the building contract — Whether bank entitled to garnish amount stated in respondent's letter — Whether fact respondent had counterclaim against borrower yet to be determined in arbitration proceedings did not affect bank's right to garnish amount stated in letter — Whether absolute nature of assignment of debt did not allow respondent to retain any rights or interest in debt assigned and obliged it to* E *pay to bank all monies it clearly stated it owed borrower — Whether clear acknowledgement of ascertained debt in respondent's letter allowed amount to be garnished under O 49 of Rules of Court 2012*

The appellant had granted various banking facilities to a party ('the JD') in F consideration for which the JD had assigned to the appellant all monies that were due and payable to the JD under a building contract it had with the respondent. The appellant sued the JD when the latter defaulted in repaying the banking facilities. The parties entered into a consent judgment. The appellant then applied to the High Court to, inter alia, garnish G RM12,117,646.88 which the respondent in a letter dated 25 October 2007 ('the 25 October 2007 letter') acknowledged that it owed the JD for variation works the latter had completed under the building contract. In the letter, the respondent acknowledged that the JD's variation order claims were authentic. The respondent valued the completed works at RM12,117,646.88 and H thanked the JD for co-operating in finalising the variation orders. Together with the letter, the respondent sent three copies of 'acknowledgement and agreement form on final variation orders' amount for the JD to sign and return. The senior assistant registrar ('the SAR') of the High Court granted the appellant a garnishee order absolute for the RM12,117,646.88 but the order I was set aside by the judge on the respondent's appeal. The judge held that the 25 October 2007 letter was not evidence of a conclusive debt owing by the respondent to the JD because, inter alia, the JD had not accepted the amount stated in the letter and also because arbitration proceedings between the JD and the respondent to determine a counterclaim by the respondent had not yet

been concluded. The instant appeal was against the decision of the judge. A

Held, unanimously allowing the appeal, setting aside the decision of the judge and reinstating the decision of the SAR:

(1) The contents of the 25 October 2007 letter amounted to an acknowledgement by the respondent that it owed the JD RM12,117,646.88 for the variation works completed by the JD. The respondent's position taken in the letter was an open unreserved statement almost akin to an admission of the existence and value of the variation works done by the JD (see para 18). B C

(2) It was irrelevant that the respondent had a counterclaim against the JD arising from the contract works. That was a matter for determination and resolution between the parties in arbitration proceedings and did not affect the fact that the respondent had clearly acknowledged that it owed the JD RM12,117,646.88 as payment for the variation works. Neither the JD for the respondent was entitled to avoid the garnishee order by reason of the counterclaim (see para 23). D

(3) With the notice of assignment cum irrevocable instruction, the respondent agreed and acknowledged that it would pay all sums due and payable to the JD under the project to the appellant. Since the assignment was absolute, the transfer of the debt from the JD to the respondent did not allow the respondent to retain any rights or interest in the debt assigned. The absolute assignment entitled the appellant to enforce the consent judgment by way of garnishee proceedings. The SAR was therefore right to order that the garnishee order nisi be pronounced absolute (see paras 24–26). E F

(4) The agreement and acknowledgement of the JD to the contents of the 25 October 2007 letter was immaterial for the purpose of O 49 of the Rules of Court 2012 and the absence of the JD's concurrence to the letter did not diminish the meaning and implications of the said letter. Order 49 only required the establishment of a debt and that the debt was due or accruing due; that is, it was payable but at a date in the future. Order 49 also did not require that the RM12,117,646.88 for the variation works had to be certified before the sum could be considered as a debt in existence which was due and payable (see paras 20–22). G H

[Bahasa Malaysia summary

Perayu telah memberikan pelbagai kemudahan perbankan kepada satu pihak ('JD') sebagai balasan yang mana JD telah menyerahhak kepada perayu semua wang yang perlu dibayar dan boleh dibayar kepada JD di bawah satu kontrak bangunan dengan responden. Perayu kemudian menyaman JD apabila JD ingkar dalam membayar semula kemudahan perbankan. Pihak telah memasuki satu penghakiman persetujuan. Perayu kemudian memohon ke Mahkamah I

Tinggi, antara lain, garnisan sebanyak RM12,117,646.88 yang mana responden dalam surat bertarikh 25 Oktober 2007 ('surat 25 Oktober 2007') mengesahkan bahawa ia berhutang dengan JD untuk kerja pengubahan yang telah disiapkan oleh JD di bawah perjanjian bangunan. Dalam surat itu responden mengesahkan bahawa tuntutan perintah pengubahan JD adalah tulen. Responden menilaikan kerja yang telah siap sebanyak RM12,117,646.88 dan berterima kasih kepada JD kerana bekerjasama dalam memuktamadkan perintah pengubahan. Bersama-sama dengan surat, responden menghantar tiga salinan 'acknowledgement and agreement form on final variation orders amount' untuk ditandatangani oleh JD dan dikembalikan. Penolong pendaftar kanan ('PPK') Mahkamah Tinggi memberikan perayu perintah garnis muktamad untuk jumlah RM12,117,646.88 tetapi perintah telah diketepikan oleh hakim atas rayuan responden. Hakim memutuskan bahawa surat 25 Oktober 2007 bukanlah keterangan kukuh hutang terhutang oleh responden terhadap JD kerana, antara lain, JD tidak menerima jumlah yang dinyatakan di dalam surat dan juga kerana prosiding timbang tara antara JD dan responden untuk menentukan satu tuntutan balas oleh responden belum lagi diputuskan. Rayuan ini adalah terhadap keputusan hakim.

Diputuskan, membenarkan rayuan, mengetepikan keputusan hakim dan mengembalikan semula keputusan PPK:

(1) Kandungan dalam surat 25 Oktober 2007 dikira sebagai satu pengesahan oleh responden bahawa ia berhutang dengan JD sebanyak RM12,117,646.88 untuk kerja pengubahan yang telah disiapkan oleh JD. Kedudukan responden diambil di dalam surat adalah satu kenyataan terbuka dan tanpa kecuali hampir sama dengan satu pengakuan akan kewujudan dan nilai kerja pengubahan yang dilakukan oleh JD (lihat perenggan 18).

(2) Adalah tidak relevan bahawa responden telah menuntut balas terhadap JD berbangkit dari kerja yang dikontrakkan. Ia adalah perkara untuk penentuan dan resolusi antara pihak dalam prosiding timbang tara dan tidak menjejaskan fakta bahawa responden telah dengan jelas mengesahkan bahawa ia berhutang JD sebanyak RM12,117,646.88 sebagai bayaran untuk kerja pengubahan. Tidak JD mahupun responden berhak untuk mengelak dari perintah garnishee dengan alasan tuntutan balas (lihat perenggan 23).

(3) Dengan notis penyerahhakan merangkap arahan yang tidak boleh dibatalkan, responden bersetuju dan mengesahkan bahawa ia akan membayar semua jumlah tertunggak dan perlu dibayar kepada JD di bawah projek kepada perayu. Memandangkan penyerahhakan adalah muktamad, pindahmilik hutang dari JD atas responden tidak membenarkan responden untuk mengekalkan apa-apa hak atau

kepentingan dalam hutang yang diserahhak. Penyerahhakan muktamad membolehkan perayu untuk melaksanakan penghakiman persetujuan dengan cara prosiding garnishee. PKP dengan itu adalah betul untuk memerintahkan perintah garnishee nisi diputuskan muktamad (lihat perenggan 24–26).

(4) Perjanjian dan pengesahan JD terhadap kandungan surat 25 Oktober 2007 adalah tidak material kerana tujuan A 49 Kaedah-Kaedah Mahkamah 2012 dan ketiadaan kesepakatan JD terhadap surat itu tidak mengurangi makna dan implikasi surat tersebut. Aturan 49 hanya mensyaratkan pembentukan hutang dan hutang itu perlu dibayar atau terakru kerana kena dibayar; iaitu, ia boleh dibayar tetapi pada satu tarikh pada masa akan datang. Aturan 49 juga tidak mensyaratkan bahawa RM12,117,646.88 untuk kerja-kerja perubahan harus diperakui sebelum jumlah itu dikira sebagai hutang yang wujud yang terhutang dan perlu dibayar (lihat perenggan 20–22).]

Notes

For cases on garnishee order, see 2(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 2286–2295.

Cases referred to

HSBC Bank Malaysia Bhd (formerly known as Hong Kong Bank Malaysia Bhd) v LH Timber Products Sdn Bhd (formerly known as Ho Lim Sawmill Sdn Bhd) & Ors [2005] 6 MLJ 625, HC (refd)

Kedah Kelang Papan Sdn Bhd v Hansol Sdn Bhd (Teknibina Advisory Services Sdn Bhd, garnishee) [1988] 1 MLJ 434 (refd)

Mohamed Tawfik bin Tun Dr Ismail v HLG Credit Sd Bhd & Anor [2012] 2 MLJ 626, CA (refd)

Saw Swan Kee v Sim Lim Finance (M) Berhad [1985] 1 MLJ 221, FC (consd)

Tapp v Jones; Pooley, Garnishee (1875) LR 10 QB 591, QB (refd)

Ted Bates (M) Sdn Bhd v Balbir Singh Jholl [1979] 2 MLJ 257, FC (refd)

Legislation referred to

Rules of Court 2012 O 49, O 49 rr 1, 3

Rules of the High Court 1980 O 49

Appeal from: AE No 37G-41–1 of 2015 (High Court, Kuala Lumpur)

Sathya a/p Kumardas (Koo Yin Soon with her) (Shearn Delamore & Co) for the appellant.

S Shanthi a/p Supramaniam (Terence Loh with her) (Belden) for the respondent.

Mary Lim JCA (delivering judgment of the court):

INTRODUCTION

[1] This appeal relates to the enforcement of a judgment debt of the sum of RM12,117,646.88 which is due and owing from the judgment debtor, Ibsul Holdings Sdn Bhd ('JD') to the appellant. The appellant sought to enforce the judgment debt through garnishee proceedings under O 49 of the Rules of Court 2012. The learned judge allowed the respondent's appeal against the order of the learned SAR who had granted a garnishee order absolute on 11 January 2016. Upon proper consideration, we unanimously allowed the appeal, set aside the decision of the High Court and reinstated the decision of the learned SAR. These are our reasons in full.

BRIEF FACTS

[2] The appellant had granted the JD various banking facilities in consideration of which the JD executed a deed of assignment dated 15 October 2002 ('deed'). By this deed, the JD assigned to the appellant all monies due and payable to the JD under a contract between the JD and the respondent relating to a project to build a water treatment plant in Jelutong, Penang. The JD notified the respondent of the assignment by way of notice of assignment cum irrevocable instruction dated 22 February 2005.

[3] When the JD defaulted on the arrangements relating to the banking facilities, the appellant sued the JD. A consent judgment was entered on 10 February 2012. The JD made some payments but then defaulted. As at 13 August 2015, the sum outstanding under the consent judgment was RM57,507,246.95.

[4] The appellant commenced garnishee proceedings seeking to garnish the sum of RM3,892,016.77 pursuant to interim certificate Nos 12, 14, 15, 16 and 26 as well as a sum of RM12,117,646.88 stated in the respondent's letter dated 25 October 2007 ('25 October 2007 letter'). In the 25 October 2007 letter, the respondent is said to have confirmed and acknowledged that it, the respondent, owed the JD a sum of RM12,117,646.88 on account of concluded works on variation orders. The learned SAR granted a garnishee absolute order.

DECISION OF THE HIGH COURT

[5] This order absolute was set aside on appeal by the learned High Court judge on the primary ground that at the material time, there was no conclusive debt already in existence or accrued from the respondent to the JD. Her Ladyship reached this conclusion based on her interpretation and

construction of the 25 October 2007 letter. It was the court's view that such letter was not evidence of a conclusive debt because there was no acceptance by the JD; and because there was a counterclaim by the respondent which was pending in arbitration between the respondent and the JD. Until the arbitration yielded an award, there was no legal debt due and accruing from the respondent to the JD. Her Ladyship also rejected the appellant's contention that interim certificate No 27 which showed that the JD is indebted to the respondent in the sum of RM11,105,662.83 had been superseded by the 25 October 2007; taking the view that an interim certificate can only be superseded by another subsequent interim certificate. According to Her Ladyship, the interim certificate 'cannot be superseded by a letter written by one party which has not been accepted by the other party'. In fact, it was the court's view that the application was 'premature'.

OUR DECISION

[6] With respect, we disagree. Order 49 of the Rules of Court 2012 provides for the attachment of debt due to a judgment debtor. It reads as follows:

> 1(1) Where a person (who is referred to as 'the judgment creditor' in this Order) has obtained a judgment or order for the payment of money by some other person (who is referred to as 'the judgment debtor' in this Order), not being a judgment or order for the payment of money into Court, *and any other person* within the jurisdiction (who is referred to as '*the garnishee*' in this Order), *is indebted to the judgment debtor*, the Court may, subject to the provisions of this Order and of any written law, *order the garnishee to pay the judgment creditor the amount for any debt due or accruing due to the judgment debtor from the garnishee*, or so much thereof as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings.
>
> (2) ...
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> (3) In this Order, 'any debt due or accruing due' includes a current or deposit account with a bank or other financial institution, whether or not the deposit has matured and notwithstanding any restriction as to the mode of withdrawal. (Emphasis added.)

[7] These provisions are substantially the same as those found under O 49 of the old Rules of the High Court 1980. The authorities under the old procedural rules remain relevant. Two such authorities are *Kedah Kelang Papan Sdn Bhd v Hansol Sdn Bhd (Teknibina Advisory Services Sdn Bhd, garnishee)* [1988] 1 MLJ 434 and *Saw Swan Kee v Sim Lim Finance (M) Berhad* [1985] 1 MLJ 221.

[8] In *Kedah Kelang Papan Sdn Bhd v Hansol Sdn Bhd*, Lim Beng Choon J more than ably explained the operation of O 49, identifying the following principles after examining several relevant cases:

A (1) No garnishee order can be made unless some person, at the time when the order is made, is indebted to the judgment debtor. If there be a debt *in presenti*, of course an order can be made to attach the debt.

(2) If there is not a debt payable *in presenti*, but there is a debt in existence, *debitum in presenti*, but payable in the future, such an order can still be B made with regard to the debt whether legal or equitable.

(3) The words 'or accruing' are intended to apply to those cases in which there are *debita in praesenti, solvenda in futuro* (debts owed at present time payable in the future). It is not enough to show that it very probable that there soon will be a debt; it must be shown that there is a debt. C

[9] When dealing with competing claims, cross-claims or the right to set off in garnishee proceedings, the Federal Court's decision in *Saw Swan Kee v Sim Lim Finance (M) Berhad* must be considered. In that appeal, the issue was D whether a garnishee has a right to set off against the debt attached by the garnisher a debt that the judgment debtor owes the garnishee. In other words, the judgment debtor owes both the garnisher and the garnishee. The Federal Court decided that in garnishee proceedings, the garnishee may set off against the debt attached a debt owed by the debtor to the garnishee provided the debt E owed to the garnishee exists before the order nisi was made. On the facts in that appeal, the Federal Court was 'unable to find any credible evidence to show that on the relevant date (January 11, 1983) any actionable debt was in existence and payable to the garnishee from the judgment debtor'. For that reason, the Federal Court held that:

F As there was at the material time no debt due and payable to the garnishee from the judgment debtor, the authorisation to pay by the judgment debtor does not have any effect ...

[10] From the terms of r 1 which is fortified by r 3, a debt which is payable G in the future remains a debt liable to be attached under O 49 r 1. Blackburn J ruled in *Tapp v Jones; Pooley, Garnishee* (1875) LR 10 QB 591 at p 592 that 'the Legislature had in view both present debt and future debt, *debita in praesenti, solvenda in futuro*, for it speaks in the earlier part of the section of 'debts owing and accruing'.' Of significant importance is what His Lordship added, that:

H ... it is quite clear that the garnishee cannot be bound to pay his debt before it is due; so that we must read 'the debt due' as meaning either the debt when due, or the debt then due. If the former reading be the correct one, then the present order was quite right; if the latter, then it was premature. I have come to the conclusion that the true construction is that there is power to make an order against the garnishee for I payment of his debts as and when they become payable, instead of making a fresh order as each falls due.

[11] Field J further explained that the object of garnishee proceedings is 'to give to a judgment creditor who cannot levy upon the chattels of his debtor *a*

remedy against his debts. The section begins by speaking of the garnishee being 'indebted' to the judgment debtor ... But the section goes on to speak of 'debts owing or accruing'.' His Lordship opined that: A

> The object is, as the next section shews, to 'bind such debts' for the benefit of the judgment creditor. ... B

[12] Order 49 allows for the debt due from one person to another to be attached or garnished in favour of a third person. In the instant appeal, it allows the debt, if it exists, due or accruing due from the respondent to the JD to be attached or garnished in favour of the appellant, the judgment creditor. It is C therefore paramount that the existence of a debt owed by the respondent to the judgment debtor must first be established, that the debt must be due or accruing due, before attachment can arise.

[13] Despite these clear tests, once in a while, the problem of identifying D whether a debt exists, whether the debt is due or is accruing, continues to present some difficulty in application and in the exercise of discretion. The present appeal illustrates that.

[14] As we see it, the issue revolves around the construction of the E 25 October 2007 letter. This letter captioned 'Agreement on Final Variation Order Amount' is initiated by the respondent and it is sent to the JD. It is quite evident from the contents of the letter that the subject matter in issue between the respondent and the JD concerns the value of variation works completed by the JD. In this letter, the respondent takes a position on the JD's claims for such F works and the value of the same. This is what the respondent says about both aspects of the variation works including what the 'Final Variation Order Amount' is:

> Based on the following related clauses on variation orders, *we concurred the authenticity of your variation order claims*. The summary of this variation orders is as G per Appendix 1 & 2. The related clauses in Conditions of Contract on variation orders are:
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> (a) Clauses 5 (a) (i) & (ii)
>
> (b) Clauses 5 (b) (c) & (d) H
>
> (c) Clause 24 (a)–(d)
>
> (d) Clause 25 (a)–(f)
>
> Variation order in Appendix 1 relates to items involving additional and change in scope of work, while Appendix 2 involves variation works under re-measurement. *The concluded variation works amounts to RM 12,117,646.88*. I
>
> We would also like to take this opportunity to extend our appreciation on your cooperation during clarification and negotiation in finalizing this variation orders. Attached please find 'Acknowledgement and Agreement Form' on 'Final Variation Orders Amount' to be signed in three (3) original copies.

Upon signing, please return two (2) copies and retain one copy for your reference. You may collect one (1) complete set of variation order details breakdown in our site office. (Emphasis added.)

[15] It is patently obvious from the above that the respondent has:

(a) acknowledged the cooperation of the JD during the clarification and negotiation in finalising the variation orders;

(b) told the JD that it concurs with the authenticity of the JD's variation claims; and

(c) also told the JD that the concluded variation works amounts to RM12,117,646.88.

[16] This must necessarily mean that the existence and extent of variation works completed by the JD is not in issue as the respondent concurred with the JD on the 'authenticity of the variation claims'. This further means that the respondent must pay the JD for such works. The respondent therefore owes the JD payment for such works. In simple terms, the respondent is indebted to the JD for the variation works; a debt exists. The next question is whether the amount owed is ascertained.

[17] For this and for the purposes of O 49, it is what the respondent next tells the JD that brings the matter into sharp focus. The respondent acknowledges and states in this letter that the concluded variation works amounts to RM12,117,646.88. This is the respondent's valuation of the JD's variation works and this is what it describes as the 'final variation order amount'. At this point, the debt crystallises with the amount determined by the respondent itself. From this point, the debt is due from the respondent to the JD.

[18] These statements of positions on the existence and the final amount of the variation works are what the respondent itself placed as the value of the variation works executed by the JD. While the respondent may have asked for the acknowledgement and agreement of the JD, the respondent's position taken in this letter is an open, unreserved statement almost akin to an admission of the existence and value of variation works done by the JD. The Federal Court's decision in *Ted Bates (M) Sdn Bhd v Balbir Singh Jholl* [1979] 2 MLJ 257 as applied in *HSBC Bank Malaysia Bhd (formerly known as Hong Kong Bank Malaysia Bhd) v LH Timber Products Sdn Bhd (formerly known as Ho Lim Sawmill Sdn Bhd) & Ors* [2005] 6 MLJ 625, on the law on open letters of communication written without reservations, is relevant to find that in the present appeal, the contents of the 25 October 2007 letter amounts to an acknowledgment by the respondent that it owes the JD, the sum of RM12,117,646.88 for variation works completed by the JD. It is pertinent to note that this letter was written after the parties had had opportunities to clarify

and negotiate as expressed in the sentence — 'We would also like to take this opportunity to extend our appreciation on your cooperation during clarification and negotiation in finalizing this variation orders'.

[19] At this time, interim certificate No 27 also has already been issued. It is dated 15 December 2006 and it showed that the JD is indebted to the respondent in the sum of RM11,105,662.83. Yet, the respondent wrote this letter on 25 October 2007 stating its evaluation of the JD's variation works. As mentioned in the letter itself, this is obviously because of the 'clarification and negotiation' between the parties 'in finalizing' the variation orders. Contrary to the High Court's findings, for the purposes of establishing whether a debt exists under the terms of O 49, the contents of the 25 October 2007 letter clearly show that interim certificate No 27 has indeed been superseded by this letter.

[20] We do not find any basis for the High Court's view that the 27 October 2007 letter could not supersede interim certificate No 27; that such an interim certificate can only be superseded by another interim certificate. With respect, this is erroneous. The High Court is not sitting in pronouncement on the matter of the variation works or even the dispute between the respondent and the JD. All that is required of the High Court is to determine whether there is a debt owing from the respondent to the JD. If there is one, and it is clear that there is from the respondent's plain statements in this letter, then the conditions of O 49 are met. The agreement and acknowledgment of the JD is immaterial for the purpose of O 49 although it may arguably be easier for the appellant to make its case where the JD agrees with the respondent's positions, especially on the amount.

[21] For the same reasons, we cannot agree with the submissions of the respondent that there cannot be any payment due and consequently any debt in existence because the sum of RM12,117,646.88 for the variation works had never been certified. Again, O 49 does not require such determination. It only requires the establishment of a debt and that the debt is due or accruing due; that is, it is payable but it may be at a deferred date in the future.

[22] It is our respectful view that the absence of the JD's concurrence on the respondent's letter does not diminish the meaning and implications of the letter. In fact, even if the JD disagrees with the respondent's statements in this 27 October 2007 letter, the unreserved and unequivocal position taken by the respondent that the variation works are genuine or authentic, that the JD must be paid for such works, and that the final variation order amount is the sum of RM12,117,646.88 as finalised by the respondent, remains.

[23] It is also irrelevant that the respondent may have a counterclaim against the JD, arising from the contract works. Any dispute by the JD on the amount

or any dispute between the parties over the respondent's counterclaim are matters for determination and resolution in the arbitration proceedings between the parties. That is a matter of contractual choice and the parties have decided to take the disputes and differences to arbitration. That choice, however, does not change the conclusions reached above. The respondent clearly acknowledged that it owes the JD a debt of RM12,117,646.88 as payment for the variation works. Neither the JD nor the respondent is entitled to avoid the garnishee order by reason of the counterclaim. This was expressed by the Federal Court in *Saw Swan Kee v Sim Lim Finance (M) Berhad* discussed earlier and where Mohamed Azmi FJ observed that '... a garnishee cannot set off against the debt attached, a debt owing to him from the judgment creditor (garnisher); but he can avail himself of a set off against the judgment debtor, which existed when the order nisi was made'. There is no evidence that the set off has been established before the order nisi was made in the present appeal. That set off, as would be represented by the counterclaim against the JD, rightly is yet to be determined and it would be dealt with in the arbitration and not, against this debt which is liable to be attached under O 49. Because it is yet to be determined, the respondent cannot set off, or raise it to diminish the appellant's right to garnish the assigned debt.

[24] With the notice of assignment cum irrevocable instruction, the respondent has agreed and acknowledged that it will pay all sums due and payable to the JD under the project to the appellant. This absolute assignment entitles the appellant to enforce the consent judgment by way of garnishee proceedings — see *Mohamed Tawfik bin Tun Dr Ismail v HLG Credit Sd Bhd & Anor* [2012] 2 MLJ 626. Although the issue before the Court of Appeal in that case was whether upon absolute assignment of the judgment debt which forms the basis of the bankruptcy proceedings, the assignee can be substituted for the assignor as the judgment creditor in the pending bankruptcy proceedings, the observations of the court are relevant in this appeal. Answering in the affirmative, Ramly JCA (as His Lordship then was) held that in an absolute assignment, not only is the total debt assigned but likewise all advantages and benefits of the debt. Consequently, the assignee was not legally impeded from substituting the assignor as the judgment creditor in the bankruptcy proceedings against the appellant.

[25] What the respondent had sought to do in the proceedings below really was to argue that because the claims between itself and the JD were unresolved especially because it had a counterclaim against the JD which is yet to be determined in the pending arbitration proceedings, the sum or debt that it owes the JD in respect of the variation works has not accrued and cannot be garnished. The decision of the Court of Appeal in *Mohamed Tawfik bin Tun Dr Ismail* illustrates the need to keep, quite separate and distinct the respective rights between the different sets of parties: between the respondent and the JD,

between the JD and the appellant; and between the respondent and the appellant. Where the assignment is absolute, which is the case in the present appeal, the transfer of the debt from the JD to the respondent does not allow the respondent to retain any rights or interest in the debt assigned.

[26] Consequently, the learned SAR was right to order that the garnishee order nisi be pronounced absolute.

[27] For all the foregoing reasons, we allowed the appeal, set aside the decision of the High Court; and reinstated the order of the learned SAR made on 11 January 2016.

Appeal allowed; decision of judge set aside and decision of SAR reinstated.

Reported by Ashok Kumar